SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 110949/96
Judge Charles E. Ramos

PHYLLIS SMALL, et al., : CONFIDENTIAL

Plaintiffs, : Deposition of:

v. : FRANK G. COLBY

LORILLARD TOBACCO COMPANY, INC., et al., : (12-18-97)

Defendants. :

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 110951/96
Judge Charles E. Ramos

MARY ANN HOSKINS, et al., :

Plaintiffs, :

v. :

R.J. REYNOLDS TOBACCO COMPANY, et al., :

Defendants. :

SUPREME COURT OF THE STATE OF NEW YORK

http://legacy.library.ucsf.edu/tid/jl07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/xtxl0001

COUNTY OF NEW YORK
Index No. 110953/96
Judge Charles E. Ramos

SHARLENE HOBERMAN, et al., :

Plaintiffs, :

v. :

BROWN & WILLIAMSON TOBACCO CORPORATION, et al., :

Defendants. :

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 110950/96
Judge Charles E. Ramos

ROSE FROSINA, et al., :

Plaintiffs, :

v. :

PHILIP MORRIS, INC., et al., :

Defendants. :

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
Index No. 110952/96
Judge Charles E. Ramos

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CATHERINE ZITO, et al., :

Plaintiffs, :

v. :

THE AMERICAN TOBACCO COMPANY, INC., et al., :

Defendants. :

_____ :

TRANSCRIPT of testimony as taken by and before PATRICIA M. MULLIGAN, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the offices of DORSEY & WHITNEY, 350 Park Avenue, New York, New York, on Thursday, December 18, 1997, commencing at 1:15 in the afternoon.

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I N D E X

WITNESS DIRECT

FRANK G. COLBY

Mr. Douglas 6

E X H I B I T S

NUMBER DESCRIPTION IDENTIFICATION

Colby-1 Memo dated 2/23/83 to 6

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Source: https://www.industrydocuments.ucsf.edu/docs/xtxl0001

		Dr. DiMarco	
Colby-2		Research Planning Memorandum	6
Colby-3		Interoffice memo dated May 19, 1972 from F. Colby to Dr. Teague	6
Colby-4		Interoffice memo dated December 4, 1973 to Dr. Blevins	6
Colby-5		Planking Assumptions and Forecast	6
Colby-6		Interoffice memo dated 11/9/76 to Dr. Piehl from W. Henley	6
Colby-7		Interoffice memo dated 1/5/77 re: Nicotine Research	6
Colby-8		Memo dated 1/24/83 Re: Cigarettes with increased nicotine/tar ratio	6
Colby-9		Memo from the desk of Dr. Colby	6
Colby-10		Memo dated 1/19/78 to James Peterson	6

(Exhibits Colby-1 through Colby-10, marked for identification.)

THE VIDEOGRAPHER: Going on the record, the time is approximately 1:15. This is the videotaped deposition of Frank G. Colby taken by the plaintiff. The matters of the New York and Texas class action tobacco cases. This deposition is being held at Dorsey and Whitney, 250 Park Avenue, New York City, New York, on Thursday, December 18th, 1997. My name is Jim Roberts. I'm the video specialist. The court

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reporter is Patricia Mulligan. We're here with Waga & Spinelli Court Reporters with offices at 4 Becker Farm Road, Roseland, New Jersey.

Counsel will now state their appearances for the record and the court reporter will please swear in the witness.

MR. DOUGLAS: I'm Cliff Douglas representing the plaintiffs.

MS. SALZMAN: Hollis Salzman, Goodkind, Labaton, Rudoff & Sucharow, for the plaintiffs in the New York case.

MS. RITTER: Ann Ritter from Ness, Motley for the State of Texas.

MR. PLESEC: William Plesec

representing R.J. Reynolds Tobacco Company and Dr. Colby.

MR. HISER: Ted Hiser representing R.J. Reynolds Tobacco Company and Dr. Colby.

F R A N K G. C O L B Y,

[DELETED]

previously sworn.

MR. PLESEC: Mr. Douglas, if I might just for the moment, you weren't here yesterday when we started the deposition and I would just like to inform you that as you are probably already aware, Dr. Colby has recently

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had a severe fracture to his shoulder. He had major surgery on that shoulder. As a result of that injury he has had difficulty sleeping. There is some pain associated with that. He has difficulty in concentrating at times, and he is subject to fatigue.

At the same time, he's being treated by Dr. Roane who is in attendance today. [DELETED] Dr. Roane will be making

judgements as to whether or not Dr. Colby can continue with the deposition. Dr. Colby's interest is doing as much today as possible, as he already expressed to you off the record. If he does have fatigue or other problems you'll understand it's beyond our control.

DIRECT EXAMINATION BY MR. DOUGLAS:

Q. Good afternoon, Dr. Colby. How are you?

A. Pardon?

Q. How are you?

A. Right now I'm doing well.

Q. Very good. I'm Cliff Douglas, and you've been sworn in by the court reporter. You have previously been sworn in by the court reporter and you're familiar with what it means to be under oath. Is that correct?

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A. Correct.

Q. And you've had an opportunity to discuss this deposition with your attorney before today. Is that correct?

A. Yes.

Q. Now, I'm sure that your attorney counselled you not to answer any question that you don't understand.

A. I've heard that before.

MR. PLESEC: Objection.

Q. And he's entitled to do that, and I also want to caution you the same way.

A. Okay. Thank you.

Q. And let me also remind you that if an objection is made that you're still required to answer the question unless you are instructed not to do so by your attorney. Okay?

A. I know that. Thank you very much.

Q. Again, if you don't understand a question, I will do my best to clarify it.

A. Of course. Sure.

Q. By the same token, if you feel tired at any time --

A. Sure.

Q. We can take a break. Just let us know.

Let me begin by asking you, you testified earlier today in the other deposition

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that you have been included in what I understood was a new edition of Who's Who in Medicine and Health Care in America?

A. Come again, please?

Q. Are you familiar with Who's Who

in Medicine and Health Care in America?

A. I'm going to be mentioned in there when it's published. Yes.

Q. I wanted to ask you if you know on what basis you are being included in that book?

A. Based on my history and involvement with smoking and health for more than a generation and also because of my previous work for a company making among other, pharmaceuticals, but mostly because of my involvement with smoking and health.

Q. That is in connection with the work you have done with R.J. Reynolds?

A. Correct.

Q. Do you know how this inclusion of you in this book came about?

A. I've been mentioned in regional Who's Who for many years. But, when I lived in Winston-Salem I was Who's Who in the southeast. Then I moved to New York City. I was mentioned Who's Who in the east and so forth, and so you get -- The regional are less -- Shall we call

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it prominent than the national one, but because of my activity with Reynolds and so forth I was,

because of my -- Also, as I mentioned in my previous testimony, I was active in the chemical division of the American Chemical Society which at the time developed industrial scientific literature. Methodology which was nonexistent prior to the end of World War II.

So my activity regarding scientific information put me into the chemical list, and then when I went to R.J. Reynolds and dedicated my career to smoking and health I became more or less listed and informed in the medical literature. And, also, when I go to a scientific meeting; specifically, medical meeting, I am asking questions of the speakers to clarify things, occasion criticize things.

Q. Do you know when you were first included in --

A. Pardon me?

Q. Do you know when you were first included in one of the Who's Who books?

A. No. I mean, I think -- I really don't remember. It was -- The chemical I think maybe after five or six years in the United States, but I really don't remember.

Q. Would your recollection be that

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it was in the 1950s?

A. Probably end of the fifties, but I really don't remember.

Q. Do you know who referred you to the Who's Who people to include you in the book?

A. No. I have no idea.

Q. I would like to ask you, Dr. Colby, a few questions regarding nicotine.

A. Pardon me?

Q. Regarding nicotine.

A. Yes.

Q. I would like to ask you a few questions.

A. Be my guest.

Q. Are you familiar with the fact that the Food and Drug Administration --

A. Pardon me.

Q. The FDA is seeking to regulate tobacco products as drug-delivery devices?

A. That's correct.

MR. PLESEC: Objection.

A. I know they're trying to.

Q. That's familiar to you?

A. That's correct. Yes.

Q. Are you aware that R.J. Reynolds

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responded to the FDA with its own comments about these issues?

MR. PLESEC: Objection.

A. I don't remember the detail, but I know they objected to it. Yes.

Q. Are you aware that in its comments RJR asserted that nicotine is important in cigarettes because nicotine plays an important role in the taste and flavor of cigarette smoke?

A. Yes.

MR. PLESEC: Objection.

Q. That is familiar to you?

A. Correct.

Q. I would like to ask you about the taste and flavor of nicotine in cigarette smoke, if I may.

MR. PLESEC: Objection.

Q. Would you describe to me --

MR. PLESEC: Excuse me first one second.

Let him finish his question before you answer it.

A. Okay. Excuse me.

Q. I'm speaking slowly so that I can

help you to hear everything.

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A. Okay.

Q. Can you describe to me what you understand to be the taste of nicotine?

MR. PLESEC: Objection.

A. Well, the taste of nicotine is the same as the -- in a way, as the taste of goose liver to make -- I mean -- or caviar or smoked ham, which makes it enjoyable to consume the product. It is also analogous to what's in beverages, which is alcohol. It's a whole gamut of physiological stimulating effects which make why you like tobacco products are like caviar or goose liver or whatever it may be.

Q. Is it your view that nicotine is essential for inclusion in cigarettes in order to make cigarettes acceptable to consumers?

MR. PLESEC: Objection.

A. By my perception the answer is yes.

Q. Can you describe the role of the taste of nicotine in cigarette acceptability?

MR. PLESEC: Objection.

A. Yes. I can. It is a miraculous chemical entity in the sense that small quantities are stimulating and keep you awake, but larger

quantities, contrary to common sense, -- I mean, I'm pushing it to make the explanation. -- tranquilize you. Tranquilize you, calm you down.

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Q. And what is the role of nicotine in taste as you understand it?

MR. PLESEC: Objection.

A. It is why you -- The main reasons why you -- it is not the main reason. One of the main reasons why you consume tobacco products.

Q. Can you describe how nicotine affects the taste of cigarette smoke?

MR. PLESEC: Objection.

A. Taste is not something like a punch in the nose. It is a spectrum of physiological activities and it makes smoking enjoyable as the way alcohol in the champagne makes champagne enjoyable. It's part of the spectrum. It is not in and by itself -- I doubt if somebody would eat nicotine by the spoonful, whether that would be something which would be desired, but it's just part of the spectrum of taste and flavor and so forth.

Q. Nicotine by the spoonful would be deadly, wouldn't it?

MR. PLESEC: Objection.

A. It would be deadly, number 1. It doesn't taste so hot anyway. It's part of -- Like I told you, I'm comparing it to goose liver. Whatever makes a specific goose liver chemical entity, you wouldn't want to eat that either.

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You want to consume the spectrum, and you talk about the spectrum of the consumer product, be it food, be it alcoholic beverage, be it club soda or whatever which makes it that you do enjoy having it.

Q. Now, you began with R.J. Reynolds in 1951. Correct?

A. Correct. Yes.

Q. How long were you with R.J. Reynolds as a full-time employee?

A. My recollection is I think I retired in closed quote, in double closed quote, in 1983, but I could be wrong by a year or two.

Q. You continued to do work for R.J. Reynolds in another capacity after 1983. Is that correct?

MR. PLESEC: Objection.

A. Yes. Indirectly I was having a, job, closed quote, then as chief law firm helping

R.J. Reynolds in the defense of smoking and health, Ed Jacobs and Associates, but I would not have worked for Jacobs per se except I was continuing my activity and loyalty toward R.J. Reynolds.

Q. If I understood correctly, your work was with Ed Jacobs' law firm?

A. That's correct. But the reason I went with Ed Jacobs was because he was the attorney

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for R.J. Reynolds, and I said the reason I went with Ed Jacob is to continue my activity and loyalty with R.J. Reynolds.

Q. During your years with R.J. Reynolds are you aware of any research that was done within the company regarding the taste of nicotine in cigarettes?

MR. PLESEC: Objection.

Q. Or cigarette smoke.

A. Specific, no, but it was part of like if you are, let's say, in a food company and you have -- let's say, make strawberry jam as part of the total, you determine whether or not it is specific new brand or old brand is or is not acceptable to the customer. That is part of it. The whole -- You cannot isolate it. It's

part of the total spectrum of the product, of the brands.

Q. You don't recall any specific research involving the taste or flavor of nicotine in cigarette smoke. Is that correct?

MR. PLESEC: Objection.

A. Well, the regulations of the U. S. government determine that you must have a specific nicotine level which is reproducible by specific chemical analytical methods. So each manufacturer of a cigarette brand is forced to

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regulate the nicotine in a way that whatever the brand level of nicotine or of a compound is is determinable in accord, which is on the label. So that determines the amount of nicotine in a specific brand, because it's prescribed by the U. S. government regulation of tobacco products.

And it's also -- Once it has been developed that you market-test, let's say the ham, you market-test a brand of cigarette by the entities other than nicotine, and once you have done that and you have a brand on the market, then you have to have it so that whatever analytical methods or specified analytical

methods have been used have been reproducible in accord what was on the label or on the -- in the listing of the brand.

Q. What are the analytical levels that -- analytical methods that you are referring to?

A. Those are chemical analytical methods which are stabilized so that if you use -- everybody who is assessing cigarette use the same method because different methods get different results, and those are methods which are determined in this particular instance by the United States government, but it was not something which was very -- You cannot use

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methods because, A, you are R.J. Reynolds and method B, because you are Philip Morris and method C because you are the Surgeon General.

One method was established for each chemical entity or which is determined for a cigarette by the government in that industry. So whatever you use, you get the same results whether you are R.J. Reynolds or whether you are a medical doctor or whether you are U. S. government.

Q. Regarding the taste of nicotine,

do you recall when you first learned about the role of the taste of nicotine in cigarette smoking?

MR. PLESEC: Objection.

A. I was aware of that in the general method before I ever know I was coming to the United States.

Q. You were aware of cigarette smoke and the role of nicotine before you came to the U. S. Is that correct?

A. Surely, because I stopped smoking approximately in the year 1935, because I was a university student at the time. I was coerced to give it up early in 1939 because I didn't have any money, and I gave up smoking approximately from 1939 until about, I think,

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'51 or thereabouts.

Q. Is your testimony that you were aware of the taste because you were a smoker?

A. I was a smoker from about '35. In the proximity of the beginning of '39. Yes.

Q. Were you aware of the role of taste based on conversations with other people?

A. No.

MR. PLESEC: Objection.

A. When I tried it out, like I would try out caviar. It was a product I enjoyed consuming.

Q. When you arrived at R.J. Reynolds were you told about the role of the taste of nicotine in cigarette smoking at that time?

MR. PLESEC: Objection.

A. I was -- I got -- They furnish me the information and I combine it with my experience was from being a smoker and from not being a smoker and being a smoker and from the literature. Yes.

Q. I'm sorry. The last --

A. I combine my experience as a smoker as a student, and when I had the experience from then taking up smoking again, combine with what I knew from reading the literature, and all of this was sort of combined for me to -- I got that information from R.J. Reynolds, but it was simply the total experience from Day 1 when I

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started smoking as a student.

Q. Let me ask you about the literature that you just mentioned. Do you recall what literature that was?

A. In the beginning it was -- Up to approximately 1950 there was a limited amount of

literature. I didn't particularly read the literature because I was not interested in smoking as a product which my interests were in. So I read what was mostly in the media rather than the scientific literature.

When I took the job as head of information of R.J. Reynolds Tobacco Company, of course, I concentrated on the tobacco-oriented literature, be it technology or be it smoking and health.

Q. Was there any literature you recall that specifically examined the role of nicotine in the taste of cigarette smoke?

MR. PLESEC: Objection.

A. This was part of it. The literature which would have anything from a way of having machinery cutting tobacco in small pieces so you could manufacture cigarette to the taste of nicotine to less effects of nicotine and other tobacco products on health.

Q. Did you play any role, yourself, in investigating the taste of nicotine?

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MR. PLESEC: Objection.
A. I did not involve -- was not involved in active research. I was interested in analyzing

the literature as it came down the pike mostly in the public domain literature.

Q. Did anyone at R.J. Reynolds in your recollection work on investigating the taste of nicotine?

MR. PLESEC: Objection.

A. I -- It was part of the total product. I do not remember what anybody focused on nicotine. It was just if you deliver the product, you taste the whole product and its various components, what do they do to acceptability or nonacceptability.

Q. Do you remember the names of any individual who studied nicotine's taste?

MR. PLESEC: Objection.

A. No. As I said, I don't believe that too many people were focusing on nicotine. We would focus on Brand A, Brand B, brand from competition to brand in your own manufacturing collection. I don't believe anybody focused on nicotine, per se.

Q. Let me just clarify. Are you referring to when you --

A. Pardon me?

Q. I'm clarifying. Are you

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referring in your answer to when you first arrived at R.J. Reynolds or to a longer time period?

A. All the time.

Q. Until you ended your full-time employment in the 1980s? Is that correct?

A. Correct. Nicotine was part of the spectrum. It was considered as part of -- It was considered -- Part of the spectrum. So I think it's difficult to isolate just this one entity in the spectrum. It just isn't. It's part of it, but it cannot be separated. Like if you are in medicine you cannot separate any particular organ from the total body reaction.

Q. Do you recall studies being done about nicotine and nicotine pharmacology as opposed to taste?

MR. PLESEC: Objection.

A. There is quite a bit of literature on nicotine pharmacology that was part of the literature which I did study, but it was only a segment of the literature I did study. Yes.

Q. And the research we're discussing now about nicotine pharmacology, that was focused specifically on nicotine itself?

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A. That is correct.

MR. PLESEC: Objection.

Q. Not on a broader spectrum you were describing?

A. That is correct. Yes.

Q. Are you aware of any taste-related research involving nicotine that was done by R.J. Reynolds' competitors?

MR. PLESEC: Objection.

A. Hearsay.

Q. Did you come across any such studies in your collection of research?

A. Yes. Because I collected everything there was, and I was also always look at the opposition, whether it was Philip Morris or whether it was Sloan-Kettering Cancer Institute, or what it was, a particular scientist who might be just a nicotine specialist rather than being a general smoking specialist.

Q. So did you see research literature from nicotine specialists at other companies?

MR. PLESEC: Objection.

A. I don't remember, but there must have been. But if you ask me specific, I don't

remember. I'm sorry.

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Q. But your recollection is that that literature generally dealt with the pharmacology of nicotine. Is that correct?

MR. PLESEC: Objection.

A. It was part of the literature. Part of it.

Q. But it didn't deal specifically with the taste of nicotine. Is that correct?

MR. PLESEC: Objection.

A. Basically the physiological reaction, but the -- No matter what, you cannot isolate in any product one chemical entity from a coordination and mixture with other entities.

To give you a specific example, which maybe I'm pushing myself, there is some literature published at a meeting in the late sixties where they combined nicotine with alleged chemical entity -- an alleged chemical entity which was cancer-causing. What they found was very little publicized, but what it showed is that you take your pick. Nicotine would stimulate carcinogenic effect of a single entity animal. It will do nothing inhibitors. You had your choice. You could say nicotine

inhibits animal carcinogenesis, it stimulates, or does nothing.

It's just one example of many

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which nicotine research gave you information which you could pick what you felt right.

Q. And what was your view of the connection between nicotine and carcinogenesis?

MR. PLESEC: Objection.

A. None.

Q. You didn't see a connection?

A. Basically. None. Number 1, I do not share the partial establishment credo that animal experiments carcinogenesis or any other physiological effect are translatable to humans.

Q. Did you know Robert DiMarco?

A. Of course.

Q. Do you know him still today?

A. Pardon me?

Q. Do you still know Dr. DiMarco?

A. I have lost contact since I left R.J. Reynolds. I think he retired. I lost contact with him a few years ago.

Q. Can you describe to me the relationship you had professionally with Dr. DiMarco while you were with R.J. Reynolds?

A. Well, he was my formal boss. I did not include him in my collection of geniuses.

Q. Why is that?

A. He -- In my adjustment he didn't have enough perception of the complexity of the problems. He was discovered in terms of

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isolated activity. Too much of a, let's say, chemist only, rather than more scientist in order to deal with products like tobacco products or food products and so forth.

Q. Did you know John Robinson? John Robinson?

A. Give me a little bit more detail.

Q. John Robinson, a scientist at R.J. Reynolds?

A. Oh, yeah. Surely. Minimal contact, but I didn't have too close of a relationship. Since you said John Robinson, R.J. Reynolds, yes. Because there are more than one.

Q. Did you know another scientist whose name was Pritchard?

A. Hum?

Q. Pritchard?

A. Pritchard, to the best of my recollection he was a scientist at the medical school in

Winston-Salem, but I'm not sure.

Q. Wally Pritchard?

A. I said the name sounds familiar, and right now without study I connect him to be one of the scientists at the Beauman Gray medical School in Winston-Salem, but I could be wrong. It's just trying to guess. I don't remember otherwise.

Q. One more name. Did you know

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Patrick Lippiello?

A. Yes. Minimal amount of contact. Just basically the name. Again, I would have to study the literature in order to be specific. It was -- The name I know. I've met him. Specifics, I cannot remember now.

Q. Do you know where Patrick Lippiello worked within R.J. Reynolds?

A. I believe so, but I couldn't swear under oath.

Q. What do you recall about where he worked?

A. I don't remember really, but I think he worked with R.J. Reynolds. It was a peculiar name. A person would not remember unless he worked there, but I don't know. I don't

remember.

Q. He was a scientist. Is that correct?

MR. PLESEC: Objection.

A. I say I don't remember, but all things being equal, probably yes, but that's guesswork. I don't remember.

Q. And where did John Robinson work?

A. Someplace similarly. Those are people who at the time I knew him, that was many, many years ago. My recollection is limited except

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going back to my collection of literature.

Q. Did you know Donald DeBathesia?

A. Yes. He had a very peculiar name. I remember he worked for R.J. Reynolds. He came in relatively late during my career, but his name sounds familiar as a member of R. and D. specifically in the later years.

Q. Do you have any basis on which to know whether any of these individuals did research at R.J. Reynolds relating to the taste of nicotine?

MR. PLESEC: Objection.

A. I don't have any specific recollection, no. I could get access to it by working at it,

but my recollection right now, no.

Q. Are you familiar with the studies done by R.J. Reynolds about the pharmacology of nicotine?

A. Basically -- Detail, no. Basically, yes.

Q. And generally. I'm not asking for a specific number, but generally can you approximate about how many studies R.J. Reynolds did on the pharmacology of nicotine?

MR. PLESEC: Objection.

A. I don't remember now.

Q. Would it be hundreds, do you think?

MR. PLESEC: Objection.

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A. Probably not. Probably -- Pure guesswork. Probably a dozen. I don't remember.

Q. Did anybody whom you worked with do nicotine pharmacology research?

MR. PLESEC: Objection.

A. I knew that people in R.J. Reynolds was specifically after my leaving with R.J. Reynolds worked that area. Specifics I do not remember.

Q. Dr. Colby, do you believe that smokers smoke for nicotine?

MR. PLESEC: Objection.

A. Many or most do. Like many or most do drink champagne. Not because of the bubbles.

Q. Would most smokers smoke if there were no nicotine in their cigarettes?

MR. PLESEC: Objection.

A. I don't know. I've never -- I've never, How should I call it, seduced a nonsmoker.

Q. Is a minimum level of nicotine in the content of the cigarette necessary to make the cigarette acceptable to consumers?

MR. PLESEC: Objection.

A. For most smokers, probably yes. For all smokers, one way or the other. No. It's guesswork again.

Q. What, if anything, did R.J. Reynolds do in its research to determine what

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the minimum levels would be to be acceptable to consumers?

MR. PLESEC: Object.

A. Any tobacco company would taste a brand or a new brand or a new combination of entities in order to determine whether it was acceptable, no, and nicotine was not the only determined, but that's part of the spectrum.

Q. Are you familiar with what's

referred to as the Federal Trade Commission test for tar and nicotine delivery?

A. Come again?

Q. Are you familiar with what is called the Federal Trade Commission test for tar and nicotine?

A. Basically, yes. Again, I don't remember the details.

Q. What is your understanding of that test?

A. Well, it's just something which you have to do in order to make sure that whether something is being tested by a government entity as distinct from a commercial entity as distinguished from other research group getting the same product and same results.

Q. Do smokers inhale exactly the same amount of nicotine that is listed in the F. T. C. rating?

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MR. PLESEC: Objection.

A. No. There simply is a standard which you use in order to have a commonality of data dissemination. Again, whether you are a medical literature or tobacco company or government laboratory.

Q. R.J. Reynolds was aware of, wasn't it, that smokers did not necessarily inhale the exact amount of nicotine listed. Is that correct?

MR. PLESEC: Objection.

A. Everybody knows that. As the same is, it wasn't specific to tobacco. Whatever you do, if you have a food product, whatever, if you use a chemical component of a food, whatever everybody consumes depends on his temperament and mood and so forth. So you -- What you do to have an understanding so that everybody can measure it by the same -- at the same level. It does not mean that you know how each consumer is going to react.

Q. What research to your knowledge was done within R.J. Reynolds on this issue?

A. As I told you, you study brands which has many entities, flavor entities, and so forth, in addition to nicotine, whether or not it was acceptable or not acceptable to any particular

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group of smokers.

Q. In your recollection did R.J. Reynolds do any blood plasma tests to determine nicotine intake --

MR. PLESEC: Objection.

A. I don't remember specifically. I heard it as a rumor.

MR. PLESEC: Once again, Doctor, please allow counsel to finish his question.

A. I'm sorry.

Q. I meant to ask you, Doctor, whether you assisted R.J. Reynolds in any way in the preparation of the company's responses to the Food and Drug Administration.

MR. PLESEC: Objection.

A. Start again, please.

Q. Do you recall that we talked earlier about the Food and Drug Administration seeking to regulate tobacco products? And I believe you confirmed that you understood that R.J. Reynolds had made comments objecting. Correct?

A. Uh-huh.

MR. PLESEC: Objection.

A. I was not involved specifically. As I recall personally, I was not involved except communicating what was in the literature. I wasn't specifically involved in the

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communication between R.J. Reynolds and the Food and Drug Administration.

Q. My question was whether you assisted R.J. Reynolds when it prepared its response to the FDA.

MR. PLESEC: Objection.

A. It was part I did not concentrate on that. It was -- They had to take from the literature that was produced from the public domain. They made the selection. I didn't do it.

Q. Did you help guide them in choosing --

A. Pardon me?

Q. Did you help guide the company in choosing literature?

A. No.

MR. PLESEC: Objection.

A. I picked anything.

Q. While you were with R.J. Reynolds were you ever asked to contribute to any Surgeon General's report?

MR. PLESEC: Objection.

A. Contribute? Let me think a minute. Let me think a minute.

Contribute, no, but analyze

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certain things, yes. Also, when the Surgeon General demanded assistance from the tobacco companies we talk about the first report in '64 report, the Food and Drug -- The government asked the tobacco companies to make the contribution. I remember very vaguely that certain ideas what should be communicated to the government by R.J. Reynolds have contributed, but that's a very, very big recollection for many years ago.

Q. Am I correct in understanding that you were involved at R.J. Reynolds in researching ways to reduce --

A. Pardon me?

Q. -- researching ways to reduce certain compounds in cigarette smoke?

MR. PLESEC: Objection.

A. I did not involve the cigarette in any particular product. I just would communicate the literature to the total R. and D. department.

Q. And who did you provide that information to?

A. Pardon me?

Q. Do you recall whom you provided

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that information to?

MR. PLESEC: Objection.

A. I was asked to collect the literature, and I had the -- For a time I had a inhouse journal which covered everything from manufacturing, technology, smoking, health, and the scientist would read that and then pick particular item for their own interests.

Q. When did you do that?

A. I don't remember, but I think it was done probably about -- I don't remember. It was probably done a few years after I -- or even shortly after I started my job there.

Q. Sir, let me just ask to be sure. How are you feeling?

A. Pardon me?

Q. How are you feeling right now? Are you getting tired? You want to keep going?

A. I'm ready for company at any time.

Q. Let me ask you. Was it important to R.J. Reynolds --

A. Pardon me?

Q. Was it important to R.J. Reynolds while you were with the company to insure that each cigarette had a certain nicotine level in

terms of its content?

MR. PLESEC: Objection.

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A. Specifically I do not know, but to people I've said several times before, it was in consumer testing. Nicotine was part of the either existing brand or new brand development.

Q. Now, I believe you testified earlier that as you described it, because of government regulations, R.J. Reynolds had to set the nicotine level the same for every cigarette?

A. Everybody had. All the tobacco companies.

Q. All tobacco companies set their nicotine levels?

A. Correct. No. No. They had to report for each brand what the nicotine level was and that had to be controllable by analytical methods, standardized methods, regardless who did the testing, and that not only apply through cigarette manufacturers. It also applied to experiment researchers who were not necessarily or not at all related to the tobacco industry. Researcher of Kessler Institute would develop for experimental purposes a specific nicotine entity, his data which he claims nicotine

blankety blank had to be verifiable by the standardized analytical methodology.

Q. Are you familiar with the ways in which nicotine delivery can be controlled in the manufacturing process?

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A. Of course.

MR. PLESEC: Objection.

Q. Can you tell me some of the ways that R.J. Reynolds could control nicotine delivery?

MR. PLESEC: Objection.

A. Anybody by considering -- by controlling or affecting the acidity or pH of the product would affect the punch or -- of nicotine.

Q. That would affect the punch --

A. I mean the -- I shouldn't -- Maybe I shouldn't have used that word. The effect of nicotine. The effects of nicotine, but affected by the acidity of the product, whether it was a cigarette or chewing tobacco or pipe tobacco or what.

Q. And what would the effect of nicotine be in your use of the word?

MR. PLESEC: Objection.

A. I told you in the beginning it was

stimulating at relatively low levels. It was sedating and calming at high levels, which is against general pharmacological common sense. Theoretically, at least.

Q. How did controlling the pH -- I assume you were referring to the pH in cigarette smoke?

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MR. PLESEC: Objection.

Q. Is that correct?

A. Product cigarette to smoke. Yes. The more alkaline a product was, the more the nicotine effect was the same with lesser amounts.

Q. And how would R.J. Reynolds change the alkalinity in the way you were talking about?

MR. PLESEC: Objection.

A. In response to customers' preference.

Q. What was the actual methodology used in the manufacturing to change the alkalinity?

MR. PLESEC: Objection.

A. You should additives to produce more or less acidity which is equivalent of more or less alkalinity which is -- Alkalinity simply the

outer spectrum of acidity.

Q. And that is represented by the term "pH." Is that correct?

A. Correct.

MR. PLESEC: Objection.

Q. What were --

A. PH is a scale, so to speak, like temperature is a scale for tropical climate, but it's not for --

Q. Can you tell me what additives

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would be used to change the pH?

MR. PLESEC: Objection.

A. I don't remember specifically, no.

Q. If I were to name a couple, might that --

A. I might recollect, yes.

Q. Would ammonia have been -- Would ammonia, ammonia or diammonium phosphate be one of those additives?

A. Could have been. Yes.

MR. PLESEC: Objection.

A. I don't remember specifics, but it's a potential uses, but I don't remember specifics.

Q. Are you familiar with the term "ammonia gas"?

A. Ammonia what?

Q. Ammonia gas?

A. G-A-S.

Q. G-A-S?

A. Ammonia gas is a chemical entity like like aspirin is or whatever or sulfuric acid is. Ammonia is a large-scale industrial chemical, as I told you, like sulfuric acid or whatever. Ammonia gas is NH3, and I said nothing related to tobacco per se, but it's induced, for example, making fertilizer and God knows what else.

Q. Did R.J. Reynolds also control

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the nicotine yield in its cigarettes by the use of filtration?

MR. PLESEC: Objection.

A. By using what?

Q. Filtration. Use of filters?

A. Surely.

Q. That was another way?

A. That was another way of controlling, but by the large, by and large filtration was not selective. It would sort of take out a spectrum of entities.

Q. Was another way in which R.J.

Reynolds controlled nicotine yield ventilation?

MR. PLESEC: Objection.

A. Again, other methods of by blowing wind in the cigarette, to put it a little bit dramatically, you would -- If you put in a lot of wind you would dilute. If you put a little wind, you would concentrate by putting holes into the side of the cigars.

Q. And those holes would affect nicotine delivery. Is that correct?

MR. PLESEC: Objection.

A. It would the spectrum including nicotine. None of those things control nicotine alone. It would always affect the total spectrum of flavor and nonflavor smoke.

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Nonflavor and flavor portions of smoke.

Q. Can you describe what you mean when you refer to those things you just mentioned?

A. Come again?

Q. Those things you just mentioned, I'm not sure I heard you exactly.

MR. PLESEC: Objection.

A. I mean, smoke is an entity, if you can call it that, that has between five and 6,000

chemical components. Anything from trace amounts which are not determinable quantitatively to amounts you can measure precisely. Five to 6,000 compounds or more. So whatever you do, whether you use filtration or ventilation or what not, it affects the total smoke composition in various ways and, to repeat, none of these things affect a single entity in the nicotine or anything else.

Q. Is what you just described true of controlling the pH?

A. Anything.

MR. PLESEC: Objection.

A. Anything you do, whether you use ventilation, whether you use acidity, whether you use specific kinds of filter, whether you use charcoal filter or acetate filters or whatever filters you may be using affects the

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total spectrum of the smoke which I said has several thousand entities and would include nicotine among others obviously.

Q. We've marked Colby-1, which is a memo you can look at, sir. It says --

A. I want to read it. Excuse me.

Q. Dated February 23, 1983. You see

that on the top right?

A. Uh-huh.

Q. And it is on letterhead which bears your name, I believe, F. G. Colby.

A. Uh-huh.

Q. And it --

A. It must be me.

Q. It's signed Frank G. Colby at the end?

A. If you don't mind.

Q. Please. Take your time.

You see this memo appears to be addressed to Dr. G. R. DiMarco?

A. Because he was the head honcho.

Q. You said earlier he was your boss?

A. That is correct. There was one level in between, but he was ultimate boss as far as R. D. concerned.

Q. I would like to read through this

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memo for a couple minutes and ask you a couple of questions, please.

You see at the beginning it says "Summary" and then I'll read it.

A. Right.

Q. "It is suggested to consider a radical, vast, and long-term R. and D. effort towards a new style tobacco cigarette which would have manageable "desirable" smoking properties by removing from tobaccos precursors of smoke ballast components. It is further suggested to have such cigarettes based on nondestructive distillation rather than pyrolysis."

A. Uh-huh.

Q. Let me confirm, this is a memo that you wrote. Correct?

A. Correct.

Q. Can you explain to me, please, what you were referring to here when you referred to "manageable desirable smoking properties"?

A. That's what you would isolate whatever in smoke was desirable and enjoyable from the -- from what I told you and scientists smoke has five to 6,000 compounds among the 6,000 compounds that only a limited number of entities which have any effect at all. So the idea was

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to try to isolate those which contribute to the enjoyment of smoking but would not include what

was as a ballast or would have any effect either way.

Q. What specifically were the smoking properties that were desirable?

A. In addition to nicotine there are some flavor components which are generally highly complex organic chemical structures which would have flavor like flavor of -- analogous to flavor of goose liver which would make it taste what it tastes like.

Q. I see.

A. But whatever there was an entity which had no effect on taste either way is thrown out. Theoretical concept.

Q. It was your view that nicotine was an essential part of the desirable smoking properties. Is that correct?

A. Yes. For most tobacco. For most smokers. There are some smokers who smoke because of the what I call the goose liver flavor, whatever it is.

Q. Looking at the third paragraph --

A. Uh-huh. Excuse me. Okay.

Q. Let me make it as clear as possible. I will read it out loud.

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A. Read it, please.

Q. It says, "This memorandum is also based on the premise that for the foreseeable future, selective removal or drastic reduction of more than a handful of specific non-gas phase, cigarette smoke components, while maintaining consumer acceptability, is technologically impossible. It is further based on the premise that the following factors determine most, if not all, of the enjoyment derived from cigarette smoking by today's smokers," and then the first thing you have listed there after the letter A is "the physiological effects provided by nicotine." Is that correct?

A. Yes.

Q. You see that?

A. What I said before. Different terminology.

Q. So that confirmed your view that nicotine would be the first and most essential desirable smoking components?

MR. PLESEC: Objection.

A. Most smokers. Not all smokers.

Q. For many smokers. You're

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qualifying?
A. Yes.
Q. Do you see the letter E at the bottom of the page?
A. Yes.
Q. And there you have listed, "It is in my judgement imperative for the company and the industry to develop cigarettes which, in addition to A through D above, carry an acceptable, if any, perceived --" And I believe you underlined "perceived" -- "risk in the mind of the smoker and a clear majority of the scientific community."
Do you see that?
A. Yeah. Let me read it for a minute more.
Q. Please take your time.
A. Yes.
Q. I want to be sure I understand what you wrote here. Am I correct in understanding that you are stating here that some smokers perceived there to be a risk in smoking?
MR. PLESEC: Objection.
Q. Is that correct?
A. Certainly they perceive a risk in

smoking.

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Q. And so was it your intention here to propose developing restructured tobacco cigarette that would enable smokers to perceive a reduced risk? Is that correct?

MR. PLESEC: Objection.

A. Smoker had to be -- Any risk that is connected to my basic perception that it is not the product, but the smoker, who is determining smoking problems.

Q. So was it your intent with this proposal to --

A. You never know --

MR. PLESEC: He didn't finish the question.

A. I'm sorry. I thought he did.

Q. Was it your intention then to provide a cigarette to smokers that they would believe was, or to use your word, they would perceive to be safer even though the company would not make that claim?

MR. PLESEC: Objection.

A. Yes.

Q. I see.

MR. PLESEC: Do you need a

break? Would you like a break?

A. No.

Q. How do you feel?

A. I would rather keep on going. If I want

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a break I'll raise my hand.

Q. Don't hesitate to let me know. Whenever you need a break I probably will, too.

At the very end of that memo, sir, would you look? It says C. C.

A. Hold on. Hold on. Hold on.

Q. It indicates a copy was provided to somebody by the initials of A. R.? Do you see that?

A. That is correct.

Q. Who was A. R.?

A. Alan Rodgman. R-O-D-G-M-A-N. A-L-A-N.

Q. Are you familiar with the product that R.J. Reynolds produced called Premier?

A. Yes. I call it shit.

Q. Can you tell me what you know about Premier? Can you describe the product?

A. This was somewhat related to my idea, but it was similar to having sex without an orgasm. Poor flavor difficult to smoke. If it had been developed by Dr. Cook it would have been -- If

it had been developed by Dr. Coop it would have had my support, but developed by a tobacco company was absolutely incredible. A low quality product. It's like having sex without an orgasm. It's not worth it.

Q. You mentioned that it was based

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partly on your idea. Was that the idea that was represented in the memo we looked at a few moments ago?

MR. PLESEC: Objection.

A. Somewhat.

Q. Can you describe that further, how it was based on that in part?

A. Probably started the memo, they were trying to implement the idea, but it was a commercially unacceptable, unenjoyable product. If its name was -- would have committed suicide.

Q. Is it your understanding that --

A. Come again.

Q. Is it your understanding that Premier reduced what is called tar by a significant amount?

MR. PLESEC: Objection.

A. Yeah. Sure.

Q. Is it your understanding that the

nicotine delivered by Premier was similar to the nicotine levels of conventional cigarettes, however?

MR. PLESEC: Objection.

A. I don't remember, but it was supposedly enough to make you smoke, but I don't remember the mechanical levels.

Q. Are you familiar with another R.J. Reynolds product called Eclipse?

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A. Yes.

Q. What can you tell me about your knowledge of Eclipse? What was that?

A. Less worse than. Improving.

Q. They're improving? You say they're improving?

MR. PLESEC: Objection.

A. It's just -- It's not good, but less worse.

Q. Is Eclipse also designed to deliver lower levels of tar? Is that correct?

MR. PLESEC: Objection. To your knowledge.

A. May have been part of the intensity. I did not have a hearing aid when the matter --

Q. You're aware of the fact that

Premier and Eclipse -- You're aware Premier and Eclipse do not burn down?

A. That is correct. That was the idea. One idea with a --

Q. Instead, they heat the contents rather than burn it?

A. Yes.

Q. Is it your understanding that Premier and Eclipse delivered vapor to the smoker?

MR. PLESEC: Objection.

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A. Among other things, yes.
Q. Does that make those products different from conventional cigarettes?
MR. PLESEC: Objection.
A. The delivery by heating and delivery by burning like sort of -- Pyrolysis is one thing. By just heating is another thing. It's just like the way -- It's similar if you boil meat or you cook meat. It's not the same thing. It's not the same thing, but it's analogous. Because one kind of thing, if you boil meat in a boiler or if you put meat in a -- What do you call it, the special ovens? Microwave is not the same if you put it in the

frying pan. You just don't -- You have the same origin, but you don't have the same product.
Q. And with Premier and Eclipse does the nicotine get delivered to the smoker via the vapor?
MR. PLESEC: Objection.
A. By heating.
Q. The heating?
A. Yes. That's my understanding.
Q. Does the nicotine reach the smoker through the vapor to your knowledge?
MR. PLESEC: Objection.
A. I don't recall. I don't know the detail

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mechanics how it gets from the product into the smoke. I don't know the exact detail. No.

Q. You remember we talked earlier about the F. T. C. testing method?

A. Yes.

Q. Do you know if the F. T. C. testing method registers substances that are transferred in vapor rather than in smoke?

MR. PLESEC: Objection.

A. Basically that's the way the methodology is designed. Yes. Or planned. Yes.

Q. So the F. T. C. --

A. So the problem is not -- not better as strong as the same methodology is used to by different people. What actually does is not important because as long as everybody use the same methodology, whether it's a valid methodology or nonvalid methodology. It's not as important as effect that everybody uses. Everybody uses it.

MR. DOUGLAS: We'll take a five-minute break.

THE VIDEOGRAPHER: Off the record at 2:29.

(Recess.)

THE VIDEOGRAPHER: Going back on the record at 2:50.

Q. Welcome back, Dr. Colby. How are

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you?
A. Okay. Thank you.
Q. You had a decent break?
A. Sure. I'm ready for combat.
Q. Very good.
Let me return to a couple of documents that we have here today. I'm going to hand you what is referred to as Colby Exhibit 2.

A. Hold on.
Q. You will see that the title on the --
A. One minute, please.
Q. You'll see that the title of this document on the first page is Research Planning Memorandum On Some Thoughts About New Brands Of Cigarettes For The Youth Market?
A. Right.
Q. And it's marked "RJR Confidential" at the top?
A. Right.
Q. And on the last page it is -- appears to be signed by Claude E. Teague, Junior?
A. Pardon me?
Q. Claude E. Teague, Junior?
A. Sure.
Q. And it's dated February 2, 1973?

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A. Uh-huh.

Q. So that was the time during which you were with the company. Correct?

A. Both of us were. Yes.

Q. Did you know Claude Teague?

A. Of course.

Q. And who is Claude Teague?

A. He was a research chemist who had a -- in addition to being a researcher also position within the chemical division.

Q. Did you work with Claude Teague at any time?

A. I believe -- I know I worked with him, but I worked for him, I don't recall.

Q. Do you recall whether you reported to Claude Teague?

A. I don't recall. I told you. I now work with him at -- administratively reported to him. I do not remember because there were some different people in the administration of the chemical division during different time period. Whether I ever reported to him administratively I do not remember either way.

Q. I'd like to refer you to the second page of the document.

A. One second, please.

Q. To the second paragraph which begins with the word "Realistically." Do you

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see that?

A. Let me read, please.

Q. I'll be happy to read it out

loud.

A. Do.

Q. It says, "Realistically, if our company is to survive and prosper over the long term we must get our share of the youth market. In my opinion this will require new brands tailored to the youth market. I believe it unrealistic to expect that existing brands identified with an over-thirty "establishment" market can ever become the "in" products with the youth group. Thus, we need new brands designed to be particularly attractive to the young smoker while ideally at the same time being appealing to all smokers."

You followed along with me?

A. I'm reading it. You didn't misspell anything.

Q. Let me go on with the following paragraph.

A. Okay.

Q. "Several things will go to make up any new "youth" brands, the most important of which may be the image and quality, which are, of course, interrelated. The questions then are, What image, and, What quality. Perhaps

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these questions may best be approached by consideration of factors influencing pre-smokers to try smoking, learn to smoke and become confirmed smokers."

Did you see that?

A. Sure.

Q. I would like to follow up that reading by looking at Page 3 where --

A. Hold on. Okay.

MR. PLESEC: Excuse me.

A. Page 3. Excuse me.

Q. Mr. Teague, or was it Dr. Teague?

A. Dr. Teague.

Q. Dr. Teague included a table which has the heading Effects Expected Or Derived From Cigarette Smoking. He then lists Roman Numeral One, Physical Effects, and below that, Letter A is nicotine response, and then he has apparently given ratings for each of three categories; pre-smoker, learner, and smoker. Do you see all that?

A. Yes.

Q. Is this a rating system that looks familiar to you?

MR. PLESEC: Objection.

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A. To the best of my recollection this is individual selection of one of variety of profiles to test. I don't believe -- I'm next to certain it's not the standard system. It's one of possible profiles for assessing.

Q. Were measurements of any kind used at R.J. Reynolds in your memory to rate the responses of these three groups that are listed here; pre-smoker, learner, and smoker?

A. It was one of the available system. Whether it was one which was specifically RJR, I don't know. It might be used even RJR by some selective ratio. By the company as a whole. It was simply one of like a profile for, let's say, chocolate or whatever.

Q. Was it your understanding that it was important for R.J. Reynolds to understand who in the population would likely become an R.J. Reynolds customer?

MR. PLESEC: Objection.

A. Any product, commercial product, whether we talk about vacuum cleaners or pate de foie or cigarettes has to be profiled according to a potential customer. In many cases what happens, using a contrary example, like, for example, a

sofa bed, you have a design one if the occupier

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of a sofa bed is a youngster and you design it differently if the user is a dirty old man like myself.

Q. So was it your understanding that some of R.J. Reynolds' customers would select R.J. Reynolds brands, cigarette brands, while they were teenagers?

A. Any product involving taste is something which has a preference among one group as versus a different group. Like, for example, you know that -- You probably know that people who are African Americans with the cigarette containing menthol. People who are coming from the French background wouldn't like that. Same thing as applies to youth to old dogs. Young dogs. All depends. You condition your product, be it food, be it a tobacco product, to a specific group and you hope at the same time it's ultimately be consumed by people who it's not aimed at.

Q. And so it was true, if I understand your testimony, sir, that R.J. Reynolds examined the wants and the desires, the interests, of younger people because they were

potential consumers of R.J. Reynolds cigarettes. Is that correct?

A. The youth market is a market of youngsters 18 and above. It stops somewhere

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between middle twenties and so forth. So you design a product by testing which will upon commercial testing proving it has an appeal to the group it is aimed at, and to apply it is something with any limitation to cigarettes or other tobacco products it applies to the whole gamut of food products, tasteful products and so forth. It also applies most of all to sofa beds.

Q. Let me ask you to look at Page Number 9 of the document.

A. Hold on. I have a little difficulty with my fingers, too. I'm sorry.

Q. The page number seems to have been cut off the top of the page, but it sits between eight and ten.

A. Let me read a little bit, please. How do you know it's nine?

MR. PLESEC: It sits between eight and ten.

THE WITNESS: That's good.

Q. We're all very sophisticated mathematicians here.

A. Okay. Shoot. Don't shoot me. Just shoot your question.

Q. At the top of the page you see it says, "At this point it will be useful to summarize what has been said in admittedly

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general terms," and presumably he's referring to earlier in the memo there and, again, this is about -- The whole memo is about some thoughts about new brands of cigarettes for the youth market. Now, you see that under Product Quality Factors?

A. Come again?

Q. Under the heading Product Quality Factors Dr. Teague listed six different items, the first of which was to include a moderate level of nicotine, 1.0 to 1.3 milligrams per cigarette delivered at a pH of 5.8 to 6.0 to insure slow absorption.

Do you see that?

A. I see that.

Q. And Number 2, he listed, "Moderate level of blended tobacco flavor ("tar" of 12 to 14) free of undesirable (e.g.,

stemmy) flavor."

Are you familiar with what Dr. Teague was talking about here regarding moderate level of nicotine and moderate level of blended tobacco flavor?

MR. PLESEC: Objection.

A. That is his calls for assessment. He was trying to do something when they couldn't make a basically rational description or qualifications of your product. Again, as a very much parallels. Parallels, food products.

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Q. Is it your understanding that here he was describing attributes for a cigarette that would appeal to the youth market?

MR. PLESEC: Objection.

A. That's what he says. That it's his intellectual output.

Q. Do you have reason to disagree with his intellectual output that we just read?

MR. PLESEC: Objection.

A. I'm not an expert in cigarette product selections. So I would say no. That would be a piece of literature for me.

Q. Now, at the top of Page 10, if

you would turn there, please, the first sentence --

A. Excuse me. One minute.

Q. -- says, "The enumerated product quality factors should be easy to achieve except those requiring some ill-defined novelty."

We've just looked at a couple of those product quality factors, haven't we, on the previous page involving moderate level of nicotine and moderate level of blended tobacco flavor?

A. Uh-huh.

Q. And that included nicotine

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delivered at a particular pH.

MR. PLESEC: Objection.

A. It's his individual intellectual concept. That's basically it. It's his -- Dr. Teague's individual intellectual concept. Whether it's applicable by others and to others, I don't know. I don't think anyone would know. It's one way of trying to put some rationality in something which is generally not 100 percent rational. To repeat again, that you have the same properties and advantages and disadvantage with goose pate.

MR. PLESEC: Excuse me, counsel. We just had some people walk into the deposition room.

Could you please identify yourselves for the record.

MR. MOTLEY: Ron Motley, Kim Vroon and Gary Galiher for the State of Texas.

Q. Let me ask you this, sir. In this sentence we've just looked at, Dr. Teague indicated that these factors should be easy to achieve. Do you have any reason to dispute that achieving these levels of nicotine and pH level would be easy to achieve?

MR. PLESEC: Objection.

A. I wouldn't agree or disagree.

Q. Neither agree or disagree?

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A. Neither agree or disagree. That is his criteria. I have no experience specifically in that kind of thing. I would not -- I'm not an expert in the area.

Q. I'm not asking now about these criteria for appealing to the youth market. Rather, sir, I'm asking you whether achieving these levels of nicotine and pH level would be easy to achieve as he has stated here.

MR. PLESEC: Objection.

A. I don't know.

Q. No basis for knowing from your own experience.

MR. PLESEC: Objection.

A. I'm not a quality evaluator. It's not my area of knowledge. If I had time -- If it was supposed to be my job I would take a few weeks for me to develop something similar.

Q. Let me show you what is marked as Colby Exhibit Number 4.

A. I know him.

Q. That's your name, isn't it?

A. Correct.

Q. And this was apparently an interoffice memorandum dated December 4, 1973, and it was from you to Mr. R. A. Blavins, Junior director of marketing planing?

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A. Yes. Let me read, please.

Q. Take your time.

A. All right. Shoot.

Q. The subject of this memo is, Cigarette concept to assure RJR a larger segment of the youth market.

Do you see that?

A. Yes.

Q. Do you recall writing this document?

A. No. Other than -- I mean, obviously I did, but it's a few years ago.

Q. Yes, indeed. Do you recognize your signature or initials at the end of the document?

A. Absolutely.

Q. And this is the type of memorandum that you would have produced at that time?

MR. PLESEC: Objection.

A. Obviously I did write it.

Q. Who is Mr. R. A. Blevins, Junior?

A. He was in R. and D. Not in R. and D., but in marketing.

Q. What was your relationship to him?

MR. PLESEC: Objection.

A. He was one of the people at the time who

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would be involved in deciding what new brands Reynolds should put on the market in order to get a bigger share of the market.

Q. Based on looking at this memo

would you agree you were in the process when you wrote this memo of assisting him in doing just that?

MR. PLESEC: Objection.

A. I was giving him my suggestion.

Q. Looking under the heading that says, Summary, you were making a suggestion to him to develop a new RJR youth appeal brand. Correct?

A. Uh-huh.

Q. And then beneath that you went into some further detail?

A. Correct.

Q. Why did you feel, if you recall, or why did you believe, if you recall, why R.J. Reynolds needed to develop a new RJR youth-appeal brand?

A. Because they were losing market share.

Q. Were they losing market share to Philip Morris?

A. That's correct.

MR. PLESEC: Objection.

Q. And that was because of the strength of Marlboro. Is that correct?

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MR. PLESEC: Objection.

Let him finish his question before you answer.

A. All right.

Q. If you'll look at the fourth paragraph under the heading Memorandum --

A. Yes. Read the first words of what you're talking about.

Q. It says, "My suggestion covers all these conditions." And then you say, "It is basically to go back as much as possible, probably at least halfway, towards the old filter cigarettes," and it's a little hard to read what's right there.

A. Yes.

Q. And then it goes on, "the cigarette of the 1950s prior to the Surgeon General's report. These cigarettes had the following three main characteristics as distinguished from today's cigarettes: Number 1, they delivered more flavor (tar). Number 2, they delivered more "enjoyment" for "kicks" (nicotine)"?

A. Yes. I read that.

Q. Were the words "enjoyment" and "kicks" words that you customarily used to

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describe the effects of nicotine?

MR. PLESEC: Objection.

Q. In your memory?

A. It was by me perceived effects of nicotine. Yes.

Q. And you thought that was something that was important for R.J. Reynolds to include in any new brands developed to appeal to youth. Correct?

MR. PLESEC: Objection.

A. Come again? Could you repeat, please?

MR. DOUGLAS: Would the reporter mind reading that back?

A. Could you repeat the question, please.

(The last question is read back by the reporter.)

A. I don't think it was as mostly focused on acceptability or market share.

Q. And you mean --

A. Pardon me.

Q. Your testimony is that that acceptability included acceptability among the youth market. Correct?

MR. PLESEC: Objection.

Q. Using the words of your memo

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here?

A. Among others. Certainly. As I said before, each product is designed for a segment of a market, but you also would you like to be acceptable to other market profiles.

Q. Let me hand you Colby Exhibit Number 5.

I'll state for the record the document I've handed you which is marked "RJR Secret" at the top and then has the title Planning Assumptions and Forecasts for the Period 19 -- And it's difficult to read. I think it says 1977 to 1986. For R.J. Reynolds Tobacco Company.

A. Uh-huh.

Q. Is marked at the bottom of the first page, Research department --

MR. PLESEC: Counsel, he's browsing through it right now. So he's not paying attention to your comment.

A. Is there any way of determining who the author is or was?

Q. And it's dated March 15, 1976?

A. But the author, the writer.

Q. Do you recall seeing this

document?

A. Pardon me?

Q. Do you recall ever seeing this

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document?
A. No.
Q. Do you recall seeing documents of this nature at R.J. Reynolds?
MR. PLESEC: Objection.
Q. Any documents that dealt with planning assumptions and forecasts for a period of time. Does that look familiar to you?
MR. PLESEC: Objection.
A. I don't recall anything. I don't recall anything. I can't understand they wouldn't have an author's name.
Q. On the first page at the bottom it refers to "research department." Does that help to clarify that for you?
A. Not really. Whatever people in the research department. It could be anybody from Claude Teague or whoever, anybody else. It's very unusual to not have at least initial. Who, I have absolutely no idea. I'm sure -- I'm next to certain I didn't write it.
MR. PLESEC: There's no question

pending.
Q. Let me refer you to the very last page of the document which says Number 14 on the top.
A. Uh-huh.

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MR. PLESEC: For the record, this is a partial document. It appears you have Pages 1 and 2, 4, maybe 5, and then 14.

Q. Do you see at the top, sir, that in the -- in the first column after the Roman Numeral II it says, "The Tobacco Industry and R.J. Reynolds Tobacco Company"?

A. Uh-huh. I read that.

Q. And then beneath that after the letter E it refers to "products."

Q. If you would, look at the second paragraph, Number 2. I'll read it out loud with you.

A. Uh-huh.

Q. It says, "The present large number of people in the 18- to 35-year-old age group represents the greatest opportunity for long-term cigarette sales growth. Young people will continue to become smokers at or above the present rates during the projection period. The

brands which these beginning smokers accept and use will become the dominant brands in future years. Evidence is now available to indicate that the 14- to 18-year-old group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term."

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Do you see that?

A. I see that. I see the text.

Q. Now, in the column on the right whose heading is The Research Department, next to Number 2 it says, "Work to improve smoke quality innovations directed toward --" And it's a bit obliterated. "-- of new brands will continue to receive major short and long-term emphasis."

A. Uh-huh. Cigarette --

MR. PLESEC: There's not a question pending.

A. I'm sorry.

Q. Does the subject matter described in what I have just read look familiar to you?

A. No.

MR. PLESEC: Objection.

Q. Not at all?

MR. PLESEC: Asked and answered.

Q. Do you have any recollection of looking while you were at R.J. Reynolds --

A. No.

MR. PLESEC: Let him finish his question.

A. He asked the question.

Q. I know you're ready for combat.

You recall, do you not, focusing

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on development of brands that would appeal to the youth market, don't you?

MR. PLESEC: Objection.

A. That was not my task. I knew other people would be working on that. It was not my work. It was just my knowing what other people did.

Q. That was the topic you wrote to Mr. Blevins about, wasn't it, in 1973?

MR. PLESEC: Objection.

A. Yes, but I have -- My perception doesn't mean that I would be familiar with what other people did.

Q. Would you generally have been aware of what the research department was doing

at R.J. Reynolds?

MR. PLESEC: Objection.

Q. Would you have generally been aware of what the research department at R.J. Reynolds was doing in March of 1976?

MR. PLESEC: Objection.

A. At the time I probably did. At the time, but it's not just yesterday. Day before yesterday.

Q. Another topic I would like to ask you about briefly, sir, do you recall having communications with the Council for Tobacco Research?

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MR. PLESEC: Objection.

Q. While you were with RJR.

A. Some communication. Yes. Minimal communication. Yes.

Q. What was the nature of those communications that you had?

A. Basically getting certain documents which they had on hand and which all they have to do is copy and send to me.

Q. What sorts of documents would those have been?

A. Whatever it was in their publications

which were relating to smoking would have been mechanically difficult for me to obtain quickly otherwise.

Q. So you received information from the Council for Tobacco Research?

MR. PLESEC: Objection.

A. Upon request on my part.

Q. Did you share information that you had with the Council for Tobacco Research?

MR. PLESEC: Objection.

A. Me, personally? No. Not to my recollection.

Q. Do you recall whether colleagues whom you worked with at RJR -- Do you recall whether colleagues you worked with at RJR

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provided information to the Council for Tobacco Research?

MR. PLESEC: Objection.

A. Some did. Yes. I don't remember now anymore.

Q. You don't recall specifically who would have done that.

A. Not any more. You should have asked me that question in '73.

Q. Did you have communications with

The Tobacco Institute at any time?

MR. PLESEC: Objection.

A. Minimal. Minimal. Again, basically in order to obtain certain documents I know they had which, me, would have taken -- call them on the phone and ask them to send me a -- forward copy to me, take me three or four weeks to obtain the same document who come out of other sources.

Q. Do you remember what the nature of the documents was that you received from The Tobacco Institute?

A. Anything basically related to smoking and health. What I would have asked from them would be something which wasn't -- but was subject which may have been a copy of a clipping from the London Times or a statement by Joseph on pipe tobacco or whatever it was, because they

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collected literature which -- They collected literature which was not what I was reading or was my domain which was the scientific, medical, and related literature.

Q. Do you recall during what years you had such contacts with The Tobacco Institute.

A. No.

Q. Do you recall whether it started in the first few years of your career at RJR?

MR. PLESEC: Objection.

A. My guess -- It's a sheer guess. -- this was in the early years rather than later years, but I really don't recall.

Q. Do you recall the name of a Tobacco Institute employee named Ann Duffin?

A. Yes.

Q. Who was Ann Duffin?

A. She had a position within the hierarchy of The Tobacco Institute. I remember contacting her because she was a cooperative person who would make it easy for me to obtain a document because she would know who to talk to and so forth.

Q. Do you remember when you had those contacts with Ann Duffin?

A. Long time ago. No. If you ask me what

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dates, the answer is no, but it was a long time ago.

Q. Would you know what decade that took place in?

A. Come again?

Q. The 1980s, 1970s?

A. Sheer guesswork. Seventies.

Q. I forgot to ask you, sir, whether you ever provided information to The Tobacco Institute.

MR. PLESEC: Objection.

A. If they ask me which may have been unusual, the answer is yes. If they ask me, but if you ask me specific instances I wouldn't be able to recall any instance.

Q. You recall generally, however, that The Tobacco Institute did request information from you? Is that true?

MR. PLESEC: Objection.

A. I was not having an affair with them. If somebody from the industry asked me for information, if I could, I would provide it to them, but I don't remember that far back any specific instances. You should have asked me so many years ago. I would have answered.

Q. Do you recall who in particular you communicated with at the Council for Tobacco Research?

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MR. PLESEC: Objection.

A. Whoever was closest to having a scientific degree. Yes, and within the hierarchy. If you give me a few names, if you give me a few names I can say yes, no, or maybe.

Q. Do you remember John Kreisher?

A. Spell it. Could you write it on a piece of --

Q. K-R-E-I-S-H-E-R.

A. Not offhand. No. In some cases I only communicated in writing. That's why I ask you to put it on a piece of paper and spelling it. Right now I don't remember.

MR. DOUGLAS: We need to change tape.

THE VIDEOGRAPHER: Off the record at 3:31. This is the end of Tape 1.

(Recess.)

THE VIDEOGRAPHER: Going back on the record at 3:33, this is Tape Number 2.

Q. We were talking earlier, sir, about the research planning memorandum. This is the document by Dr. Teague that I believe you have there. Would you mind taking a look at it again.

MR. PLESEC: What exhibit number is that, counsel? Is that Colby 2?

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MR. DOUGLAS: That's it.

Q. If you'll turn to Page 10.

A. Excuse me?

Q. Page 10?

A. Ten, what, pages? I'm sorry. I'm joking.

Q. Let me refer you to the very last paragraph on that page, and I'll read it out loud.

It says, "Assuming that at some point marketing people will establish a name and large -- and image for a new youth brand and assuming that the thoughts on product quality factors expressed above are approximately correct, then research and T. P. D. should be able to provide the product needed. Most of the product specifications defined are achievable with present technology."

I'll stop there for the moment.

Do you recall what the initials T. P. D. refer to there?

MR. PLESEC: Objection.

A. Probably, guessing, tobacco product development. Probably guessing.

Q. Do you have any reason to

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disagree with the proposition that R.J. Reynolds had the technology at the time to achieve the product specifications described in this document?

MR. PLESEC: Objection.

A. I wouldn't know.

Q. Let me be very specific. Did R.J. Reynolds have the technology to achieve a moderate level of income -- Pardon me -- a moderate level of nicotine of between one and 1.3 milligrams per cigarette?

MR. PLESEC: Objection.

A. I do not believe there was a basic differential in product technology between R.J. Reynolds and Philip Morris and American Tobacco. There was no fundamental differential in expertise and notice among the various tobacco company depending on each specialty. I don't see how there was a fundamental difference between the various tobacco companies, and I'm talking basically about the larger ones like Philip Morris and R.J. Reynolds and American Tobacco, but there was no basic differential in qualification and expertise in technology. To the best of my knowledge there was not.

Q. If I understand your testimony,

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this technological ability was shared by all of the tobacco companies.

A. Correct.

Q. And all of the tobacco companies to your knowledge shared that technological ability to deliver set levels of pH in tobacco smoke. Is that correct?

MR. PLESEC: Objection.

A. Probably yes.

Q. That was true of R.J. Reynolds, wasn't it?

MR. PLESEC: Objection.

A. Yes. Of course.

Q. Are you familiar with the term "nicotine-to-tar ratio"?

A. Yes.

Q. And what does that refer to?

A. What it says. Tar is a chemical entity of accumulation of specific chemical compounds which were determined by a standardized methodology dictated by the United States government, and nicotine is an individual single entity chemical compound and also was quantified by a certain methodology dictated by the

American government regulation.

Q. Is it your understanding that the nicotine-to-tar ratio then refers to the relative amounts of nicotine and tar in a given

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cigarette?

MR. PLESEC: Objection.

A. That's correct. A cigarette or a smoke?

Q. Cigarette smoke.

A. Cigarettes or smoke. And/or smoke. Whatever.

Q. It could refer to both.

A. That is correct.

Q. Do you recall that R.J. Reynolds in its research while you were there focused on the desirability of controlling the nicotine-to-tar ratios?

MR. PLESEC: Objection.

A. It's one desirability. It was a mandatory requirement of the U. S. government. Before you put a product on the market you have to identify how much tar the product yields upon certain smoking condition and how much nicotine level. It was a mandatory labeling requirement.

Q. Did R.J. Reynolds seek to modify the nicotine-to-tar ratios so that it could

reduce the levels of tar while maintaining levels of nicotine?

MR. PLESEC: Objection.

A. Each product was standardized in order to be put on the market, and there was a whole variety of high-tar, high-tar, high-nicotine

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nonfilter cigarettes like Camel, regular Camel -- I mean Camel, and then there were other products where the opposite was the case.

Q. So those differences you have just described were differences controlled in the manufacturing process. Is that correct?

A. Yes. So it was not a question of liberty of action. It was -- had to be identified by some of U. S. government.

Q. Is it your understanding that nicotine has pharmacologic effects on the human body?

MR. PLESEC: Objection.

A. Hum?

MR. PLESEC: Objection.

Q. Is it your understanding that nicotine has pharmacologic effects on the human body?

MR. PLESEC: Objection.

A. Of course.

Q. Is it your view that nicotine causes dependency in cigarette smokers?

MR. PLESEC: Objection.

A. It's a very complex question. The answer is -- As phrased the answer is no. It is a -- Anything creates dependency, no matter what it is. Whether you use the Internet, whether you eat goose liver, eat caviar, anything creates

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dependence, and nothing does. There are certain things which create a high level of dependency, or if you want to use an obscene, some more obscene thing like -- What do you call it? The dependency -- I haven't for a second -- addictive. Being addictive.

In my judgement addiction or dependency is not a scientific term like red or blue or white or white. It is a individually controlled term. As I said, there are people who are addicted to sex. There are people who are addicted to the Internet. There are people who are addicted to goose liver, and there are people who are addicted to smoking. It's an all-or-nothing proposition?

Addiction is something which is

depending on this definition. For example, the U. S. government tell the people there was a relatively accepted definition. I don't mean universally accepted definition of addiction way back when which included in order for a product to be addictive or -- it had to be consumed for a time with ever-increasing quantities. Since that did not fit the H.E.W. they change the definition of the tobacco among other things and they are eliminated that condition, which was the sine qua non of addiction or whatever you

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suppose to call it, the other name afterwards, and that's the way it is.

In order to have their dogma prevail they change the definition, which is somewhat, if you pardon the obscenity, parallel to what you have in religion. It's everything from the quasi-atheism to extremist muslim. You have -- The definitions change. The dogma of H. E. W., in order to make a convincing case that they said that smoke is addictive, goose liver is addictive. They change the definition in order to make it fit their dogma. The 1964 Surgeon General part report was an attempt, make an attempt to be scientifically objective said

it must mention addiction, but then they call it nervous breakdown.

So in order to make it fit the reference to addiction they change the definition of addiction, which, my money, it's the same. There's nothing scientific about it. It's the same thing as if you define by arbitration your definition of what is believed in court or what is atheism. It's an individual definition which makes it to be addictive, not addictive, and so forth.

Myself, I had a close relationship with Neumann (phon) after he authored the report, and he basically agreed

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with me that whatever happened after he was the chief of the '64 report it didn't fit his idea of scientific objectivity, and he was -- He was a man wrote owned the only report which attempted, didn't succeed necessarily, but attempted to try to be scientifically objective. So it's called and labeled science. In my judgement it is not science. It's dogma.

Those basic concepts are said by the major enemies of cigarette smoking. Like to some extent they are said by people like Ernie

Winley and Richard Doyle. There is -- The difference between regardless of whether hostile smoking or wonderful smoking, a difference between the various scientists. They are what I call the foaming at the mouth antagonists, but this one thing, and there's the people who try to be good objective scientists.

My policy was when L. R. consider somebody to be a good scientist, even though it was his opinion was contrary to my opinion, I would give him my name and would tell him what I was doing. Generally I have good relations with these people as long as you were active in the sciences. I used to have a close relationship with Neumann. I have a good relationship with Ernie Winley because we happen to have the same

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basic -- Bekon. I used to have a -- Or I still have to some extent a good relationship with and so forth. There are other people who I call the foaming at the mouth. I have a good relationship, and I don't tell them what I'm doing unless they ask them.

Q. Is it your testimony that the 1988 Surgeon General's report in finding that nicotine was addictive did nothing more than

change the definition from the 1964 Surgeon General's report?

A. No. It used to change of a definition. It change the definition between 1964 and to nicotine addiction report. It change the definition in order to be faithful. Again, realizing the new testament in order to fit your limited religious concept.

Q. But is it your testimony -- I want to make sure I understand. -- that the 1988 Surgeon General's report was able to find nicotine to be addictive only because according to your testimony they changed the definition?

A. That is correct. If they had used the other definition they wouldn't have agreed with Neumann that it is not addictive habit, but they change the definition. So they -- For me that's not science. That's dogma.

Q. Are you familiar with the

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research dealing with nicotine dependency that was done between 1964 and 1988 that was relied on by the Surgeon General in 1988 but was not available to the Surgeon General in 1964?

MR. PLESEC: Objection.

A. Of course. Because in order to make --

create a dogma you have to create data and, as I said, the purpose of the exercise was to be able to label something addictive.

Even if you look at it from the point of view of the antismoking scientist it's a very, very nefarious enterprise. If you label a product addictive than any wimp will say -- continue to do what is not supposed to be done and continue, but the antismoking development -- the antismoking establishment, they create the opposite from what they claim to be.

If I want to get somebody to stop smoking I tell them, You are a wimp. You're a coward. You're a nobody. You are a piece of shit. If I tell him that, he's more likely to stop smoking. If I tell him nicotine is addictive and they say, Oh, I continue smoking because I can't stop because it's labeled as something I can't do anything about.

So the antismoking establishment does achieve objective contrary to what they

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claim their objective is. There is no question that if they said, You are a wimp if you cannot stop smoking, that would be a much larger

percentage of the smokers who do want to quit who would quit, but, to repeat, for dogmatic reasons cover their own fault.

Q. Are you familiar with the term "tracheostomy"?

A. Come again?

Q. Tracheostomy or tracheotomy that's done for throat surgery?

A. Could you repeat, please?

Q. Tracheostomy?

A. Yeah. Right. That's a surgical procedure.

Q. Yes. That involves --

A. Right.

Q. Creating a hole in the throat?

A. Just another gimmick which is created by the dogmatist of the establishment. They put into the animal a cigarette below the mouth, which means you have an effect of grotesquely differential with what happened of a smoker because I don't know a single smoker who in order to smoke cuts his throat and puts the cigarette there. They all put it there.

So that is an utter obscene

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dogmatic development of the antismoking

development which is by my judgement. Not science, but dogmatism.

Q. So based on your testimony do I understand that you are aware, you are aware that some smokers smoke through the hole in their throats?

A. No. No. No. You misunderstand me. That is mainly used for animal experiments. I don't know of a single smoker who cuts his throat and smoke. They all smoke with the mouth or with the nose. I don't -- Repeat, I don't know not one smoker in the world who cuts his throat to put a cigarette below his chin. That's ridiculous.

Q. Are you aware that people who have experienced throat cancer, throat cancer, as part of the surgery for that they have had the tracheostomy done?

A. Yes, but that is not in order to induce smoking. That is a surgical procedure to treat a condition which is alleged to have related to smoking.

Q. And in those cases would it surprise you to know that more than 40 percent of smokers who have had tracheostomies because

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of smoke cancer that they are told was caused by their cigarette smoking continued to smoke after their surgery?

MR. PLESEC: Objection.

A. Of course it was, but they wouldn't smoke with a tracheostomy. They would continue smoking through the mouth.

Q. Would it surprise you to know that those smokers are smoking through the holes in their throats?

MR. PLESEC: Objection.

A. There are some smokers, some people who have tracheostomy who continue to smoke. Surely, but it is, again, the definition of addiction comes into if they say you are a wimp. If you can't to smoke that case people with those conditions, a large percent of them would not smoke. By and large, by and large, it is not the smoking but the smoker.

If you look at any smoker who is -- who has difficulty in giving up smoking you will find invariably that he has other negative habits. In other words, he doesn't use seat belts. He eats pork strip every day. He does not involve -- is not involved in any

leisure exercise. And I say "leisure

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exercise." I don't say "exercise." That you have a clustering of negative health habits. All this together group the dogmatic proclamation of addiction has the opposite effect of what the antismoking establishment portends to be its intent.

To repeat, it's not the smoking. It is the smoker. You find invariably that the smokers who have difficulty giving up smoking also have a clustering of negative health behaviors. Eating lousy diets, not being physically active in leisure time, and so forth. So that smoking is a marker for negative health behavior like leisure exercise is a marker for the opposite while sedentary life-style, the guy who is a bum who doesn't walk from his house to the subway in extreme is the other -- excessive sedentary life-style is the other extreme.

You have also invariably strong connection between socioeconomic effects and smoking behavior. Not even the most frenetic antismoking dogmatist will say that smoking causes poverty. It's the opposite. The more

needs you have for something to help you, the more down-scale you are on the economic scale, the more likely you will become a smoker. It is

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simply part of what I call the spectrum of risk factors which induces the smoking.

There is not the invention of Frank Colby. It's not the invention of anyone at the tobacco industry. This is something which was developed by the most significant medical journal in the world, the New England Journal of Medicine, in 1994, I think, an editorial by a chief editor who was an angel. Socioeconomic status is a more important risk factor than smoking. To repeat, that was the top-level scientific level of the medical establishment. Not the dogmatist. Good scientists.

That is a fact, and socioeconomic development is not just one factor. It is extremely difficult to articulate there is more than one thing. The easiest gauge focus for economic is education, but in and by itself it is not enough. To repeat, if you have nothing else you can determine, but it's quantifiable. You know then it's better than nothing, but you

have on the one hand somebody who does not achieve the finishing high school who is a multimillionaire is one person. You have the other person, somebody who makes a Ph.D. at Harvard and he's a bum on the street collecting coins on the corner.

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Those are the extreme, and this is only one factor in the total thing which determines your behavior, not only about smoking but of anything related directly, indirectly to health, and that is where the difference is between dogmatist of the antitobacco movement and the scientific objective reality, and it is extremely complex. So people find it very difficult to work because it is so complex.

Q. May I ask you a question?

A. Pardon?

Q. May I ask you a question?

A. Sure.

Q. With the person with the tracheostomy, your testimony is that they don't continue to smoke because of dependency. Is that correct?

MR. PLESEC: Objection.

A. Pardon me?

Q. Your testimony is that the smoker who has had a tracheostomy because of throat cancer does not continue to smoke because they are dependent on nicotine. Is that correct?

MR. PLESEC: Objection.

A. Could you repeat, please?

MR. DOUGLAS: Could I ask the court reporter to read that back.

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(The last question is read back by the reporter.)

A. You can't tell. There's no way. You have to look at each individual case individually. By and large, the ones who continue are the ones who have the -- not the single bad behavior, but a spectrum of a collection of bad behaviors.

Q. Do some continue because they are dependent then?

MR. PLESEC: Objection.

A. Or because they are poor and have no other way of coping with difficulties of life. You can't tell. You have to look at each individual separately.

Q. But some individuals might continue to smoke because of a dependency?

A. Yes. Some people want to have sex every day. Twice a day. It is dependency. You can develop dependency on anything in the world. I told you; smoking, like anything else, there are a few individuals who can't live without it, and there are others who, if you told them it was a dumb thing to do, they stop it today or tomorrow. You cannot make a generalization. You have to look at each individual by itself.

THE VIDEOGRAPHER: Off the record at 4:02.

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(Recess.)

THE VIDEOGRAPHER: Back on the record at 4:04.

Q. Returning briefly, sir, to the smoker who has had throat surgery because of throat cancer, is it your belief some of those smokers continue to smoke after the surgery because of the taste or flavor of cigarette smoke?

MR. PLESEC: Objection.

A. There's no way of deciding without looking at it case by case. No way.

Q. Are you aware that currently the Department of Justice is conducting an

investigation of the tobacco industry?

MR. PLESEC: Objection.

A. You are persecuting them. Yes.

Q. Have you, sir, had any contact with the Department of Justice relating to your work in the tobacco industry?

MR. PLESEC: Objection.

A. Me? No.

Q. To your knowledge has anyone representing you, including any attorney, had any contacts with the Department of Justice?

MR. PLESEC: Objection.

A. I wouldn't know. I would not know.

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Q. You don't know if an attorney representing you has had contacts with the Justice Department? Is that your testimony?

MR. PLESEC: Asked and answered. Objection.

A. I wouldn't know. No. Probably not, but I wouldn't know.

Q. Do you know whether any of your colleagues, former colleagues, that is, from R.J. Reynolds, have had any contact with the Department of Justice?

MR. PLESEC: Objection.

A. There are some people who have had contact. You have to name a name for me to say yes or no.

Q. Well, I was going to ask you, sir, if you recall who among former or current R.J. Reynolds employees have had contacts with the Justice Department.

A. You have to give me a name. I will say -- give you my best guess yes or no. Yes or not. Give me a specific name.

Q. Well, let me be more specific in defining it if I can. To your knowledge has anyone whom you worked with directly had contacts with the Department of Justice?

MR. PLESEC: Objection.

A. I don't know, but I don't believe so, but

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I cannot swear to it either way.

MR. DOUGLAS: No further questions.

A. Okay.

MR. PLESEC: Let's go off the record for a second here.

THE VIDEOGRAPHER: Off the record at 4:08.

(The deposition is concluded at

4:08 p.m.)

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JURAT

I, FRANK G. COLBY, do hereby certify that I have read the foregoing transcript of my testimony taken on December 18, 1997, and have signed it subject to the following changes:

PAGE	LINE	CORRECTION

DATE:

Sworn and subscribed to before me on this

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C E R T I F I C A T I O N

I, PATRICIA M. MULLIGAN, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness was sworn by me to testify as to the truth, the whole truth, and nothing but the truth.

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

_____

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